IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

Crl.MC.No. 2095 of 2007()

SC.99/2007 of ASSISTANT SESSIONS COURT, MUVATTUPUZHA

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PETITIONER: 1ST ACCUSED

BINU, S/O THIRUVAINADAR,
BLAMBALASSERYKUDY, KUTTAMPUZHA VILLAGE,
KOTHAMANGALAM.

BY ADV. SRI.SOORAJ T.ELENJICKAL

RESPONDENTS: COMPLAINANT

STATE OF KERALA, THROUGH CIRCLE
INSPECTOR OF EXCISE, MUVATTUPUZHA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2095 of 2007

Dated this the 29th day of June, 2007

O R D E R

Petitioner along with three other accused faces indictment in a prosecution under Section 55 (g) of the Kerala Abkari Act. He is arrayed as the 1st accused. Detection of the offence was allegedly made by the excise officials in a forest. None of the four accused could be apprehended by the excise officials. After investigation, final report was filed and cognizance was taken of the offences alleged against all the four accused. The petitioner was not arrested in the course of the investigation.

2. The petitioner along with the co-accused appeared before the trial court and before the trial court on the side of the prosecution, Pws 1 to 7 were examined and Exts.P1 to P9 were marked. M.Os 1 to 6 were also marked. The matter was posted for 313 examination of the accused. At that stage, the petitioner/1st accused started absconding. According to the petitioner, he was not absconding, but he could not appear before court for reasons beyond his control. Be that as it may, he was not available to continue with the trial after the matter was posted for 313 examination. The other accused were examined under Section 313 Cr.P.C. No defence evidence whatsoever was adduced.

3. The learned Sessions Judge, before whom the case was pending, proceeded to pass Annexure-A2 judgment holding that the accused are not guilty. Of course, at that stage, the petitioner, though on the array of parties, was not actually present to take part in the trial. After the judgment was pronounced, the case against the petitioner was split up and was refiled. The petitioner is now obliged to appear before the learned Assistant Sessions Judge in the split up case, which has been re-numbered as S.C.No.99 of 2007. The learned Assistant Sessions Judge has issued non bailable warrant to procure the presence of the petitioner.

4. The petitioner, in these circumstances, has come to this Court with the prayer that powers under Section 482 Cr.P.C may be invoked to quash the proceedings against the petitioner. The learned counsel for the petitioner submits that the rigour of the dictum in [**Moosa v. Sub Inspector of Police** [2006(1) KLT 552 F.B] is not applicable to the facts of this case at all. The petitioner was available before the trial court when the prosecution evidence was adduced completely. No evidence has been adduced later after the petitioner became not available for trial. The counsel contends that the decision against the petitioner has also got to rest on the materials which were available before the learned Sessions Judge when he passed Annexure-A2 judgment. In as much as Annexure-A2 judgment holds

that the co-accused are not guilty, the petitioner is also entitled to the advantage of that finding. The petitioner may not be dragged to continue the trial. In fact, the learned Sessions Judge could himself have proceeded to acquit the accused. In these circumstances, it is prayed that further proceedings against the petitioner in S.C.No.99 of 2007 may be quashed. The learned counsel for the petitioner particularly points out to the Court the findings in paragraphs 17 and 18 of Annexure-A2 judgment, which must on all fours apply to the petitioner also.

5. I am conscious of the decision in [**Moosa v. Sub Inspector of Police** (supra). But in that decision also it has been indicated that there can still be a class of cases where the absconding accused may be entitled to successfully persuade a court to invoke the powers under Section 482 Cr.P.C. I totally agree with the learned counsel for the petitioner that this is an eminently fit case, where resort to that exercise must be made. The prosecution has adduced all its evidence against the petitioner and on that evidence, the charge against the petitioner cannot lie at all. The prosecution has no case that any further evidence has to be adduced against the petitioner alone. In fact, that stage is over also. The petitioner does not want to adduce any defence evidence. The other accused have also not adduced any defence evidence.

6. This Crl.M.C is, in these circumstances, allowed. S.C.No.99 of 2007 on the file of the Assistant Sessions Judge, Moovattupuzha against the petitioner is hereby quashed.

(R.BASANT, JUDGE)

rtr/-